IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE K.C. BHANU**

**WRIT PETITION No. 13869 of 2001**

Between:

T.K.Jena

**..... PETITIONER**

AND

Commanding Officer,

INS Circars, Visakhapatnam

and 2 others

**.....RESPONDENTS**

**ORDER:**

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Seeking a Mandamus, declaring (i) the action of the

1st respondent in dismissing the petitioner vide order No.GX.No.10979/S, dated 03.02.1999, (ii) Order No.MF DL/2477/876/US(P)/D(N-II)/2001, dated 28.05.2001 of the 3rd respondent and (iii) Order No.DL/2488, dated 06.06.2001 of the 2nd respondent rejecting the appeal, as illegal and arbitrary, the present writ petition is filed.

It is the case of the petitioner that he joined the service of the respondent organization on 02.01.1991 as a Radio Operator. He was transferred from Communication Centre, Mumbai to Communication Centre, Port Blair and he has to report duty on 13.05.1998. But he could not report to duty as his mother fell serious

ill and he sought permission from his superiors through a telegram dated 05.07.1998 to stay back at Sunabeda to look after his mother. After recovery of his mother's health, the petitioner, on 13.10.1998 reported to duty at Madras and the officials at Madras directed him to report duty at INS Circars, Visakhapatnam in the office of the 1st respondent. When he went to report duty to Visakhapatnam, he was kept under custody. The 1st respondent never issued the charge sheet to him calling explanation under Section 90 of the Navy Act, 1957, and no enquiry was conducted and no opportunity was given to him to explain his case. The 1st respondent during his custody at his office dictated a letter and compelled him to sign on it and later on served the impugned dismissal order dated 03.02.1999. Aggrieved by the same, the petitioner filed W.P.No.15886/99 before this Court seeking reinstatement of service with back wages and continuity of service, and this Court by order dated 31.08.2000, directed him to file statutory appeal before the concerned. The petitioner filed an appeal. But the respondents 2 and 3 by orders dated 28.05.2001 and 06.06.2001, rejected his appeal without attaching any grounds. Hence the petitioner is constrained to file this writ petition.

The respondents filed a detailed counter affidavit denying the allegations made by the petitioner in his affidavit filed in support of the petition. It is stated that in pursuance of transfer orders, the petitioner, instead of reporting duty at INS Adyar at Chennai on 13.05.1998, went to his hometown Sunabeda. On 01.07.1998 a warning telegram was sent to the petitioner directing him to report duty forthwith, otherwise arrest warrant would be issued. On 03.07.1998 the father of the petitioner sent a telegram to Communication Centre at Port Blair stating that the petitioner would be reporting for duty on 10.07.1998. Since the petitioner failed to report duty, he was marked "RUN" with effect from 13.05.1998 vide INS Jarawa at GX.No.1234/S dated 16.07.1998 and an arrest warrant was issued. On completion of three months period, the petitioner's case was transferred to INS Circars at Visakhapatnam. On 13.10.1998 the petitioner surrendered onboard INS Adyar at Chennai in plain clothes and was subsequently transferred to INS Circars at Visakhapatnam for investigation and summary trial. The petitioner remained in desertion for 152 days. The 1st respondent after trying the sailor summarily had recommended for the award of rigorous imprisonment for 90 days and dismissal from Naval Service. However, the Naval Headquarters have approved the punishment warrant for dismissal from Naval Service only. As desertion is a serious offence, the petitioner was tried

summarily in accordance with the regulations and awarded the punishment of dismissal. The petitioner has also not had unblemished record of service. The petitioner was punished by the Commanding Officers of various establishments in the past.

The learned counsel for the petitioner contended that the admission of the petitioner is not an unequivocal admission, but the admission is followed by a proper explanation for his absence, and that Section 49 (2) (b) of the Navy Act, 1957 (for short "the Act") has no application in view of the fact that the said provision only apply when there is any misconduct during the war period, and that because the petitioner's mother has been suffering with heart ailment, he has to attend on her, therefore, the absence of the petitioner cannot be said to be willful or wanton. It is further contended that there was no intention on the part of the petitioner to desert the duties and the regulations have not been followed in not providing opportunity to him and the summary trial as defined under the Indian Navy Act has not been conducted and except the charge and statement given by the writ petitioner, the 1st respondent did not conduct any enquiry. He further contended that the appellate authority has not applied its mind properly with reference to the explanation offered by the writ petitioner, and therefore, prays to allow the writ petition.

On the other hand, the learned standing counsel appearing for the respondents contended that the petitioner, without prior permission or intimation or obtain any leave, wantonly absented himself and even thereafter the petitioner did not report for duty, but on issuance of warrant only, the petitioner himself surrendered before the concerned authorities, and that the petitioner has not produced any documents to show that his mother's condition was serious due to heart ailment and that there are no grounds to interfere with the impugned proceedings.

It is for the disciplinary authority to take appropriate action as per the rules, and on appeal it is for the appellate authority to consider the same. The administrative decision cannot be interfered with unless it is illogical or suffers from any perversity or the findings are not based upon any evidence. Admittedly no enquiry was conducted in this case. When charges are framed against the writ petitioner, he pleaded guilty to the charges. Basing on the admission the petitioner was imposed punishment of removal from service. The said order was confirmed by the appellate authority. The order of the disciplinary authority is based upon under Section 49 (2)

(b) of the Navy Act, 1957, which reads thus:

> "If a person deserts under any other circumstances, be punished with imprisonment for a term which may extends to fourteen years or such other punishment as is hereinafter mentioned and in very such case he shall forfeit all pay, head money, bounty, salvage, prize money and allowances that have been earned by him and all annuities, pensions, gratuity, medals and decorations that may have been granted to him and also all clothes and effects which he may have left on board the ship or the place from which he deserted, unless the tribunal by which he is tried or the Central Government or the Chief of the Naval Staff, otherwise directs."

The above provision makes it clear that the disciplinary authority can impose any other punishment, which includes dismissal from service. The learned counsel for the petitioner contended that this provision has no application to the facts of this case in view of the fact that there was no war. Section 49 of the Act comes within the Chapter-VIII, which deals with Articles of War. Therefore, basing on the caption of Chapter-VIII of the Act, the learned counsel for the petitioner vehemently contended that since the transfer of the petitioner was affected not during the War period, Section 49 (2) (b) of the Act has no application to the facts of the case. Chapter-VII of the Act deals with several provisions, where under a person can be dealt with by taking disciplinary authority or even imposing punishment of imprisonment. Section 49 of the Act deals with disobedience and insubordination. Section 52 of the Act deals with Drunkenness. Section 59 of the Act deals with Arson. All these provisions are in Chapter-VIII, which deals with Articles of War. If the contention of the learned counsel for the petitioner is to be accepted, a person who drinks not during the war period cannot be punished. It is not the object and purport of the Chapter-VIII of the Act. Basing on the heading, it is contended that all the provisions mentioned in the Chapter-VIII would apply only to the offences committed during the war period. The same cannot be accepted and sustainable in view of the fact that each provision deals with separate incidents, whether those incidents may be occurred during the war period or not in the war period. Therefore, Section 49 (2) (b) of the Act applies to the person who deserts the office without any prior intimation.

With regard to conducting of enquiry, there cannot be any dispute. Once a person pleads guilty to the charge, there is no need to conduct any enquiry. The petitioner pleaded guilty to the charges levelled against him. But he has given explanation stating that after transfer he went to his native place to inform his parents. On hearing the transfer of petitioner, his mother got heart attack, therefore, she was admitted to the hospital and he has to look after his mother and after his mother recouped her

health, he started his journey. Whatever he stated in his explanation, it is not substantiated with any other evidence or material. In view of the fact that he pleaded guilty for the charges levelled against him, it is for him to establish that he was prevented by a sufficient cause. Except his oral statement, the petitioner has not produced any material to show that he was prevented by sufficient cause. Nothing is prevented to the petitioner to inform the respondents stating the reasons for overstaying at his native place when he was transferred. He did not care to inform the officers for what reasons he was unabled or prevented to join duty at his transferee place. Even after recovery of his mother's health, the petitioner did not voluntarily join the duties. That's why, a warrant has been issued by the competent authority against the petitioner. In pursuance of the warrant, the petitioner was produced before the concerned authority. Therefore, it is a clear case, which comes under Section 49 (2) (b) of the Act. Since the petitioner himself voluntarily admitted the guilt, the question of conducting any enquiry does not arise and the impugned proceedings cannot be said to be perverse or contrary to law.

The contention of the learned counsel for the petitioner that even the appellate authority did not take into consideration the explanation given by the petitioner to the charges levelled against him and the appeal grounds. The learned counsel for the petitioner has placed strong reliance on the judgment of the Division Bench of this Court in ***S.Pushpa Raj v. Depot Manager, APSRTC***, wherein this Court held:

> "Now adverting to the last contention of the learned Counsel for the petitioner, we may state that the explanations of the petitioner to the charge-sheet did not receive proper and fair consideration at the hands of the Disciplinary Authority and the Appellate Authority. Both the Disciplinary Authority and the Appellate Authority have casually adverted to the explanations without recording specific finding on the defence putforth by the petitioner except stating generally that the petitioner has not offered any satisfactory reply. Fair play in action requires that the disciplinary authority shall consider the defence of the delinquent with open mind and judiciously. Evence of Sri *T.Rajram*, management witness, is quite scanty and vague. There is no other evidence to bring home the charges."

In this case, since the petitioner has not produced any material except his oral statement to the charges that by sufficient cause he was prevented in joining duty in pursuance of the moment order, therefore, the disciplinary authority has passed appropriate orders. The punishment of dismissal cannot be said to be

disproportionate to the proved misconduct.

Till he was arrested in pursuance of a warrant, the petitioner did not care to inform his superior officers without joining at his transferee place. Being in service of Navy, the petitioner should be more careful and diligent. Discipline is to be maintained in the respondent organization. High standard of discipline has not been followed by the writ petitioner. Therefore, there are no grounds to interfere with the impugned proceedings. The writ petition is devoid of merit and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

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**K.C. BHANU,J**

Dated: 16.08.2005

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